

AMENDED IN SENATE MAY 14, 2013

AMENDED IN SENATE MAY 1, 2013

**SENATE BILL**

**No. 809**

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**Introduced by Senators DeSaulnier and Steinberg**  
**(Coauthors: Senators Hancock, Lieu, Pavley, and Price)**  
(Coauthor: Assembly Member Blumenfield)

February 22, 2013

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An act to add Section 805.8 to the Business and Professions Code, to amend Sections 11165 and 11165.1 of the Health and Safety Code, and to add Part 21 (commencing with Section 42001) to Division 2 of the Revenue and Taxation Code, relating to controlled substances, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 809, as amended, DeSaulnier. Controlled substances: reporting.

(1) Existing law classifies certain controlled substances into designated schedules. Existing law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

Existing law requires dispensing pharmacies and clinics to report, on a weekly basis, specified information for each prescription of Schedule II, Schedule III, or Schedule IV controlled substances, to the department, as specified.

This bill would establish the CURES Fund within the State Treasury to receive funds to be allocated, upon appropriation by the Legislature,

to the Department of Justice for the purposes of funding CURES, and would make related findings and declarations.

This bill would require the Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the Board of Registered Nursing, the Physician Assistant Committee of the Medical Board of California, the Osteopathic Medical Board of California, the State Board of Optometry, and the California Board of Podiatric Medicine to increase the licensure, certification, and renewal fees charged to practitioners under their supervision who are authorized to prescribe or dispense controlled substances, by up to 1.16%, the proceeds of which would be deposited into the CURES Fund for support of CURES, as specified. This bill would also require the California State Board of Pharmacy to increase the licensure, certification, and renewal fees charged to wholesalers, nonresident wholesalers, and veterinary food-animal drug retailers under their supervision by up to 1.16%, the proceeds of which would be deposited into the CURES Fund for support of CURES, as specified.

(2) Existing law permits a licensed health care practitioner, as specified, or a pharmacist to apply to the Department of Justice to obtain approval to access information stored on the Internet regarding the controlled substance history of a patient under his or her care. Existing law also authorizes the Department of Justice to provide the history of controlled substances dispensed to an individual to licensed health care practitioners, pharmacists, or both, providing care or services to the individual.

This bill would require licensed health care practitioners, as specified, and pharmacists to apply to the Department of Justice to obtain approval to access information stored on the Internet regarding the controlled substance history of a patient under his or her care, and, upon the happening of specified events, to access and consult that information prior to prescribing or dispensing Schedule II, Schedule III, or Schedule IV controlled substances.

(3) Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose a tax upon qualified manufacturers, ~~as defined~~, *defined, beginning January 1, 2015*. The tax would be collected by the State Board of Equalization pursuant to the procedures set forth in the Fee Collection Procedures Law. The bill would require the board to

deposit all taxes, penalties, and interest collected pursuant to these provisions in the CURES Fund, as provided. This bill would also allow specified insurers, as defined, *and health care service plans, as defined*, to voluntarily contribute to the CURES Fund, as described. Because this bill would expand application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The Controlled Substance Utilization Review and Evaluation
- 4 System (CURES) is a valuable investigative, preventive, and
- 5 educational tool for law enforcement, regulatory boards,
- 6 educational researchers, and the health care community. Recent
- 7 budget cuts to the Attorney General's Division of Law Enforcement
- 8 have resulted in insufficient funding to support the CURES
- 9 Prescription Drug Monitoring Program (PDMP). The PDMP is
- 10 necessary to ensure health care professionals have the necessary
- 11 data to make informed treatment decisions and to allow law
- 12 enforcement to investigate diversion of prescription drugs. Without
- 13 a dedicated funding source, the CURES PDMP is not sustainable.
- 14 (b) Each year CURES responds to more than 60,000 requests
- 15 from practitioners and pharmacists regarding all of the following:
- 16 (1) Helping identify and deter drug abuse and diversion of
- 17 prescription drugs through accurate and rapid tracking of Schedule
- 18 II, Schedule III, and Schedule IV controlled substances.
- 19 (2) Helping practitioners make better prescribing decisions.
- 20 (3) Helping reduce misuse, abuse, and trafficking of those drugs.

(c) Schedule II, Schedule III, and Schedule IV controlled substances have had deleterious effects on private and public interests, including the misuse, abuse, and trafficking in dangerous prescription medications resulting in injury and death. It is the intent of the Legislature to work with stakeholders to fully fund the operation of CURES which seeks to mitigate those deleterious effects, and which has proven to be a cost-effective tool to help reduce the misuse, abuse, and trafficking of those drugs.

SEC. 2. Section 805.8 is added to the Business and Professions Code, to read:

805.8. (a) (1) The Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the Board of Registered Nursing, the Physician Assistant Committee of the Medical Board of California, the Osteopathic Medical Board of California, the State Board of Optometry, and the California Board of Podiatric Medicine shall increase the licensure, certification, and renewal fees charged to practitioners under their supervision who are authorized pursuant to Section 11150 of the Health and Safety Code to prescribe or dispense Schedule II, Schedule III, or Schedule IV controlled substances by up to 1.16 percent annually, but in no case shall the fee increase exceed the reasonable costs associated with maintaining CURES for the purpose of regulating prescribers and dispensers of controlled substances licensed or certificated by these boards.

(2) The California State Board of Pharmacy shall increase the licensure, certification, and renewal fees charged to wholesalers and nonresident wholesalers of dangerous drugs, licensed pursuant to Article 11 (commencing with Section 4160) of Chapter 9, by up to 1.16 percent annually, but in no case shall the fee increase exceed the reasonable costs associated with maintaining CURES for the purpose of regulating wholesalers and nonresident wholesalers of dangerous drugs licensed or certificated by that board.

(3) The California State Board of Pharmacy shall increase the licensure, certification, and renewal fees charged to veterinary food-animal drug retailers, licensed pursuant to Article 15 (commencing with Section 4196) of Chapter 9, by up to 1.16 percent annually, but in no case shall the fee increase exceed the reasonable costs associated with maintaining CURES for the

1 purpose of regulating veterinary food-animal drug retailers licensed  
2 or certificated by that board.

3 (b) The funds collected pursuant to subdivision (a) shall be  
4 deposited in the CURES accounts, which are hereby created, within  
5 the Contingent Fund of the Medical Board of California, the State  
6 Dentistry Fund, the Pharmacy Board Contingent Fund, the  
7 Veterinary Medical Board Contingent Fund, the Board of  
8 Registered Nursing Fund, the Osteopathic Medical Board of  
9 California Contingent Fund, the Optometry Fund, and the Board  
10 of Podiatric Medicine Fund. Moneys in the CURES accounts of  
11 each of those funds shall, upon appropriation by the Legislature,  
12 be available to the Department of Justice solely for maintaining  
13 CURES for the purposes of regulating prescribers and dispensers  
14 of controlled substances. All moneys received by the Department  
15 of Justice pursuant to this section shall be deposited in the CURES  
16 Fund described in Section 11165 of the Health and Safety Code.

17 SEC. 3. Section 11165 of the Health and Safety Code is  
18 amended to read:

19 11165. (a) To assist law enforcement and regulatory agencies  
20 in their efforts to control the diversion and resultant abuse of  
21 Schedule II, Schedule III, and Schedule IV controlled substances,  
22 and for statistical analysis, education, and research, the Department  
23 of Justice shall, contingent upon the availability of adequate funds  
24 in the CURES accounts within the Contingent Fund of the Medical  
25 Board of California, the Pharmacy Board Contingent Fund, the  
26 State Dentistry Fund, the Board of Registered Nursing Fund, the  
27 Osteopathic Medical Board of California Contingent Fund, the  
28 Veterinary Medical Board Contingent Fund, the Optometry Fund,  
29 the Board of Podiatric Medicine Fund, and the CURES Fund,  
30 maintain the Controlled Substance Utilization Review and  
31 Evaluation System (CURES) for the electronic monitoring of, and  
32 Internet access to information regarding, the prescribing and  
33 dispensing of Schedule II, Schedule III, and Schedule IV controlled  
34 substances by all practitioners authorized to prescribe or dispense  
35 these controlled substances.

36 (b) The reporting of Schedule III and Schedule IV controlled  
37 substance prescriptions to CURES shall be contingent upon the  
38 availability of adequate funds for the Department of Justice for  
39 the purpose of ~~finding~~ funding CURES. The department may seek  
40 and use grant funds to pay the costs incurred from the reporting

1 of controlled substance prescriptions to CURES. The department  
2 shall make information about the amount and the source of all  
3 private grant funds it receives for support of CURES available to  
4 the public. Grant funds shall not be appropriated from the  
5 Contingent Fund of the Medical Board of California, the Pharmacy  
6 Board Contingent Fund, the State Dentistry Fund, the Board of  
7 Registered Nursing Fund, the Naturopathic Doctor's Fund, or the  
8 Osteopathic Medical Board of California Contingent Fund to pay  
9 the costs of reporting Schedule III and Schedule IV controlled  
10 substance prescriptions to CURES.

11 (c) CURES shall operate under existing provisions of law to  
12 safeguard the privacy and confidentiality of patients. Data obtained  
13 from CURES shall only be provided to appropriate state, local,  
14 and federal persons or public agencies for disciplinary, civil, or  
15 criminal purposes and to other agencies or entities, as determined  
16 by the Department of Justice, for the purpose of educating  
17 practitioners and others in lieu of disciplinary, civil, or criminal  
18 actions. Data may be provided to public or private entities, as  
19 approved by the Department of Justice, for educational, peer  
20 review, statistical, or research purposes, provided that patient  
21 information, including any information that may identify the  
22 patient, is not compromised. Further, data disclosed to any  
23 individual or agency, as described in this subdivision, shall not be  
24 disclosed, sold, or transferred to any third party.

25 (d) For each prescription for a Schedule II, Schedule III, or  
26 Schedule IV controlled substance, as defined in the controlled  
27 substances schedules in federal law and regulations, specifically  
28 Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21  
29 of the Code of Federal Regulations, the dispensing pharmacy or  
30 clinic shall provide the following information to the Department  
31 of Justice on a weekly basis and in a format specified by the  
32 Department of Justice:

33 (1) Full name, address, and telephone number of the ultimate  
34 user or research subject, or contact information as determined by  
35 the Secretary of the United States Department of Health and Human  
36 Services, and the gender, and date of birth of the ultimate user.

37 (2) The prescriber's category of licensure and license number,  
38 the federal controlled substance registration number, and the state  
39 medical license number of any prescriber using the federal

1 controlled substance registration number of a government-exempt  
2 facility.

3 (3) Pharmacy prescription number, license number, and federal  
4 controlled substance registration number.

5 (4) National Drug Code (NDC) number of the controlled  
6 substance dispensed.

7 (5) Quantity of the controlled substance dispensed.

8 (6) International Statistical Classification of Diseases, 9th  
9 revision (ICD-9) Code, if available.

10 (7) Number of refills ordered.

11 (8) Whether the drug was dispensed as a refill of a prescription  
12 or as a first-time request.

13 (9) Date of origin of the prescription.

14 (10) Date of dispensing of the prescription.

15 (e) The CURES Fund is hereby established within the State  
16 Treasury. The CURES Fund shall consist of all funds made  
17 available to the Department of Justice for the purpose of funding  
18 CURES. Money in the CURES Fund shall, upon appropriation by  
19 the Legislature, be available for allocation to the Department of  
20 Justice for the purpose of funding CURES.

21 SEC. 4. Section 11165.1 of the Health and Safety Code is  
22 amended to read:

23 11165.1. (a) (1) A licensed health care practitioner eligible  
24 to prescribe Schedule II, Schedule III, or Schedule IV controlled  
25 substances or a pharmacist shall ~~provide~~ *submit* a notarized  
26 application developed by the Department of Justice to obtain  
27 approval to access information ~~stored on the Internet~~ regarding  
28 the controlled substance history of a patient *that is stored on the*  
29 *Internet and* maintained within the Department of Justice, and,  
30 upon approval, the department shall release to that practitioner or  
31 ~~pharmacist~~, *pharmacist* the electronic history of controlled  
32 substances dispensed to an individual under his or her care based  
33 on data contained in the CURES Prescription Drug Monitoring  
34 Program (PDMP).

35 (A) An application may be denied, or a subscriber may be  
36 suspended, for reasons which include, but are not limited to, the  
37 following:

38 (i) Materially falsifying an application for a subscriber.

39 (ii) Failure to maintain effective controls for access to the patient  
40 activity report.

1 (iii) Suspended or revoked federal Drug Enforcement  
2 Administration (DEA) registration.

3 (iv) Any subscriber who is arrested for a violation of law  
4 governing controlled substances or any other law for which the  
5 possession or use of a controlled substance is an element of the  
6 crime.

7 (v) Any subscriber accessing information for any other reason  
8 than caring for his or her patients.

9 (B) Any authorized subscriber shall notify the Department of  
10 Justice within 10 days of any changes to the subscriber account.

11 (2) To allow sufficient time for licensed health care practitioners  
12 eligible to prescribe Schedule II, Schedule III, or Schedule IV  
13 controlled substances and a pharmacist to apply and receive access  
14 to PDMP, a written request may be made, until July 1, 2012, and  
15 the Department of Justice may release to that practitioner or  
16 pharmacist the history of controlled substances dispensed to an  
17 individual under his or her care based on data contained in CURES.

18 (b) Any request for, or release of, a controlled substance history  
19 pursuant to this section shall be made in accordance with guidelines  
20 developed by the Department of Justice.

21 (c) (1) Until the Department of Justice has issued the  
22 notification described in paragraph (3), in order to prevent the  
23 inappropriate, improper, or illegal use of Schedule II, Schedule  
24 III, or Schedule IV controlled substances, the Department of Justice  
25 may initiate the referral of the history of controlled substances  
26 dispensed to an individual based on data contained in CURES to  
27 licensed health care practitioners, pharmacists, or both, providing  
28 care or services to the individual.

29 (2) Upon the Department of Justice issuing the notification  
30 described in paragraph (3) and approval of the application required  
31 pursuant to subdivision (a), licensed health care practitioners  
32 eligible to prescribe Schedule II, Schedule III, or Schedule IV  
33 controlled substances and pharmacists shall access and consult the  
34 electronic history of controlled substances dispensed to an  
35 individual under his or her care prior to prescribing or dispensing  
36 a Schedule II, Schedule III, or Schedule IV controlled substance.

37 (3) The Department of Justice shall notify licensed health care  
38 practitioners and pharmacists who have submitted the application  
39 required pursuant to subdivision (a) when the department  
40 determines that CURES is capable of accommodating the mandate



1 contained in paragraph~~(2)~~. (2), *but not before June 1, 2015*. The  
2 department shall provide a copy of the notification to the Secretary  
3 of the State, the Secretary of the Senate, the Chief Clerk of the  
4 Assembly, and the Legislative Counsel, and shall post the  
5 notification on the department's Internet Web site.

6 (d) The history of controlled substances dispensed to an  
7 individual based on data contained in CURES that is received by  
8 a practitioner or pharmacist from the Department of Justice  
9 pursuant to this section shall be considered medical information  
10 subject to the provisions of the Confidentiality of Medical  
11 Information Act contained in Part 2.6 (commencing with Section  
12 56) of Division 1 of the Civil Code.

13 (e) Information concerning a patient's controlled substance  
14 history provided to a prescriber or pharmacist pursuant to this  
15 section shall include prescriptions for controlled substances listed  
16 in Sections 1308.12, 1308.13, and 1308.14 of Title 21 of the Code  
17 of Federal Regulations.

18 SEC. 5. Part 21 (commencing with Section 42001) is added to  
19 Division 2 of the Revenue and Taxation Code, to read:

20  
21 PART 21. CONTROLLED SUBSTANCE UTILIZATION  
22 REVIEW AND EVALUATION SYSTEM (CURES) TAX LAW  
23

24 42001. For purposes of this part, the following definitions  
25 apply:

26 (a) "Controlled substance" means a drug, substance, or  
27 immediate precursor listed in any schedule in Section 11055,  
28 11056, or 11057 of the Health and Safety Code.

29 (b) "*Health care service plan*" means an entity licensed  
30 pursuant to the Knox-Keene Health Care Service Plan Act of 1975  
31 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the  
32 Health and Safety Code).

33 ~~(b)~~  
34 (c) "Insurer" means an admitted insurer writing health insurance,  
35 as defined in Section 106 of the Insurance Code, and an admitted  
36 insurer writing workers' compensation insurance, as defined in  
37 Section 109 of the Insurance Code.

38 ~~(e)~~  
39 (d) "Qualified manufacturer" means a manufacturer of a  
40 controlled substance, but does not mean a wholesaler or nonresident

1 wholesaler of dangerous drugs, regulated pursuant to Article 11  
2 (commencing with Section 4160) of Chapter 9 of Division 2 of  
3 the Business and Professions Code, a veterinary food-animal drug  
4 retailer, regulated pursuant to Article 15 (commencing with Section  
5 4196) of Chapter 9 of Division 2 of the Business and Professions  
6 Code, or an individual regulated by the Medical Board of  
7 California, the Dental Board of California, the California State  
8 Board of Pharmacy, the Veterinary Medical Board, the Board of  
9 Registered Nursing, the Physician Assistant Committee of the  
10 Medical Board of California, the Osteopathic Medical Board of  
11 California, the State Board of Optometry, or the California Board  
12 of Podiatric Medicine.

13 42003. (a) ~~For~~ *Beginning January 1, 2015*, for the privilege  
14 of doing business in this state, an annual tax is hereby imposed on  
15 all qualified manufacturers in an amount determined pursuant to  
16 Section ~~42005~~, 42007 for the purpose of establishing and  
17 maintaining enforcement of the Controlled Substance Utilization  
18 Review and Evaluation System (CURES), established pursuant to  
19 Section 11165 of the Health and Safety Code.

20 (b) The Department of Justice may seek grant moneys from  
21 insurers *and health care service plans* for the purpose of upgrading  
22 and modernizing ~~the CURES~~. Insurers *and health care service*  
23 *plans* may contribute by submitting their payment to the Controller  
24 for deposit into the CURES Fund established pursuant to  
25 subdivision (e) of Section 11165 of the Health and Safety Code.  
26 The department shall make information about the amount and the  
27 source of all private grant funds it receives for support of CURES  
28 available to the public. *A grant or gift made to the CURES Fund*  
29 *pursuant to this subdivision shall be nondeductible for state tax*  
30 *purposes*.

31 42005. (a) The board shall collect the annual tax imposed by  
32 this part pursuant to the Fee Collection Procedures Law (Part 30  
33 (commencing with Section 55001)). For purposes of this part, a  
34 reference in the Fee Collection Procedures Law to a “fee” shall  
35 include this tax and a reference to a “feepayer” shall include a  
36 person liable for the payment for the taxes collected pursuant to  
37 that law.

38 (b) (1) The board shall not accept or consider a petition for  
39 redetermination that is based on the assertion that a determination  
40 by the Department of Justice incorrectly determined that a qualified

1 manufacturer is subject to the tax or that a determination by the  
2 Department of Justice improperly or erroneously calculated the  
3 amount of that tax. The board shall forward to the Department of  
4 Justice any appeal of a determination that asserts that a  
5 determination by the Department of Justice incorrectly determined  
6 that a qualified manufacturer is subject to the tax or that a  
7 determination by the Department of Justice improperly or  
8 erroneously calculated the amount of that tax.

9 (2) The board shall not accept or consider a claim for refund  
10 that is based on the assertion that a determination by the  
11 Department of Justice improperly or erroneously calculated the  
12 amount of a tax, or incorrectly determined that the qualified  
13 manufacturer is subject to the tax. The board shall forward to the  
14 Department of Justice any claim for refund that asserts that a  
15 determination by the Department of Justice incorrectly determined  
16 that a qualified manufacturer is subject to the tax or that a  
17 determination by the Department of Justice improperly or  
18 erroneously calculated the amount of that tax.

19 42007. (a) The Department of Justice shall determine the  
20 annual tax by dividing the cost to establish and maintain  
21 enforcement of CURES by the number of qualified manufacturers.  
22 For calendar year ~~2014~~, *2015*, the CURES cost shall be four million  
23 two hundred thousand dollars (\$4,200,000). Beginning with the  
24 ~~2015~~ *2016* calendar year, and for each calendar year thereafter,  
25 the Department of Justice shall adjust the rate annually to reflect  
26 increases or decreases in the cost of living during the prior fiscal  
27 year, as measured by the California Consumer Price Index for all  
28 items.

29 (b) The Department of Justice shall provide to the board the  
30 name and address of each qualified manufacturer that is liable for  
31 the annual tax, the amount of tax, and the due date.

32 (c) All annual taxes referred to the board for collection pursuant  
33 to Section 42005 shall be paid to the board.

34 42009. All taxes, interest, penalties, and other amounts  
35 collected pursuant to this part, less refunds and costs of  
36 administration, shall be deposited into the CURES Fund.

37 42011. The board shall prescribe, adopt, and enforce rules and  
38 regulations relating to the administration and enforcement of this  
39 part.

1 SEC. 6. No reimbursement is required by this act pursuant to  
2 Section 6 of Article XIII B of the California Constitution because  
3 the only costs that may be incurred by a local agency or school  
4 district will be incurred because this act creates a new crime or  
5 infraction, eliminates a crime or infraction, or changes the penalty  
6 for a crime or infraction, within the meaning of Section 17556 of  
7 the Government Code, or changes the definition of a crime within  
8 the meaning of Section 6 of Article XIII B of the California  
9 Constitution.

10 SEC. 7. This act is an urgency statute necessary for the  
11 immediate preservation of the public peace, health, or safety within  
12 the meaning of Article IV of the Constitution and shall go into  
13 immediate effect. The facts constituting the necessity are:

14 In order to protect the public from the continuing threat of  
15 prescription drug abuse at the earliest possible time, it is necessary  
16 *that* this act take effect immediately.